IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20138 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRA ARJANBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2, 4,
GOVERNMENT PLEADER for Respondent(s) : 3,
MR JITENDRA MALKAN for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 08/12/2005

ORAL JUDGMENT

1. Mahendra Arjanbhai Patel-detenu through his cousin Tulsidas Abaji Bhimani has filed this habeas

corpus petition under Article 226 and 227 of the Constitution of India challenging the order of detention dated 27.09.2005 passed by District Magistrate, Kutch-Bhuj under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'PBM Act'). The present petition was filed on 03.10.2005 and this Court issued RULE on 04.10.2005 which was made returnable after four weeks and that is why this matter has come up before this Court for hearing and final disposal.

2. Heard, Mr. H.R. Prajapati, learned Advocate for the petitioner and Mr. Pujari learned A.G.P for respondent No.3 and Mr. Jitendra Malkan, learned Senior Counsel for respondent No.4 in this behalf. Mr. Prajapati, learned Advocate for the petitioner has invited my attention to the order of detention and committal order dated 27.09.2005 by which petitioner was arrested and sent to Sabarmati Central Jail, Ahmedabad.

3. Learned Advocate for the petitioner has further invited my attention to the grounds supplied by the detaining authority vide order of detention dated 27.09.2005. Mr. Prajapati, learned Advocate for the petitioner has stated that in this case on surprise checking one truck bearing No. GJ-12-U-6023 was intercepted by the authority and 615 liters of kerosene was found in three barrels and one 'carba'. It was also found that stock of blue coloured kerosene was mixed and being used as a fuel. The said offence was registered as being C.R. No. II 306/05 at Bhuj City Police Station dated 25.09.2005. Pursuant to that order of detention was passed by District Magistrate, Kutch-Bhuj on 27.09.2005 under the provisions of the P.B.M. Act and detenu was arrested on the same day and sent to Sabarmati Central Jail, Ahmedabad.

4. In the order of detention it was further stated that it will be open for the petitioner to make representation within a period of 12 days to (1)

District Magistrate, Kutch-Bhuj, (2)the State Government through Secretary, Food, Civil Supplies & Consumer Affairs Department, Government of Gujarat, (3) Central Government through Additional Secretary, Government of India, New Delhi and (4) P.B.M Advisory Board through Secretary, P.B.M. Advisory Board Gandhinagar. In view of the above, detenu on 30.09.2005 through his Advocate made representation to respondent No.2.

5. Though, there are a number of grounds in this petition, Mr. Prajapati, learned Advocate for the petitioner is confined to only one ground that though petitioner made representation to Secretary, Home Department and the Advisory Board, the detaining authority has not forwarded the same to Central Government for its consideration and therefore there is an unexplained delay.

6. He further stated that the detenu made a representation dated 30.09.2005 to respondent No.2 which is received by the respondent No.2. It was

further stated that respondent No.2 has to satisfy this Court by placing cogent materials as to when it received the said representation and how it was dealt with by its office. In failing to do so, the continued detention of the petitioner becomes violative of Article 22(5) of the Constitution of India. It was further stated that the detaining authority requested the office to forward the copy of the said representation to all the concerned authorities forthwith. The detaining authority has to furhter satisfy that the copy of the said representation is forwarded to other competent authorities immediately and in failing to do so, the continued detention of the petitioner become bad in law on this ground alone and this petition is required to allowed on this ground alone.

7. It is submitted that in case the respondent No.2 had forwarded the copy of the representation dated 30.09.2005 to the respondent No.1 and respondent No.4 have to satisfy this Court as to when they received the said representation and then how it

was dealt with it in their respective offices. Therefore, non consideration of or delay in considering the said representation by the state government or the central government, in both the circumstances, is fatal to the rights of the detenu. More particularly the continued detention of the petitioner becomes violative of Article 22(5) of the Constitution of India. In support of this, learned Advocate for the detenu has placed reliance on the decision of the Apex Court in the case of Rajammal Vs. State of Tamil Nadu reported in AIR 1999 SC 684, particularly, on paras 8 and 9 of the said judgment where the apex Court has observed as under,

> 7.1 “**8.** It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in @page-SC687 clause (5) of Article 22 convey the message

that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K. M. Abdulla Kunhi and B. L. Abdul Khader v. Union of India, (1991) 1 SCC 476 : (1991 AIR SCW 362). The following observations of the Bench can profitably be extracted here (Para 12 of AIR) :

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously

considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the

representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

8. It is also evident from the affidavit of Mr. A.K. Ganguly, Under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi dated 26.10.2005 in which it is stated that the detention order was approved by the State Government on 07.10.2005 and the same was received by the Food, Civil Supplies & Consumer Affairs Department on 13.10.2005 vide their letter dated 05.10.2005. Thereafter, a file was prepared and was placed before the Section Officer and the Deputy Secretary. Thereafter, the said file was placed before the Hon'ble Minister of Civil Supplies for appropriate order and he rejected the same on 20.10.2005. It may be noted that on 15.10.2005 and 16.10.2005 being Saturday and Sunday were holidays. The decision of the Central Government was conveyed to petitioner-detenu by a telegram dated 21.10.2005 by Jail

Authority.

9. In view of the above, it is fully established that state government failed and remained negligent in forwarding representation of the detenu to the Central Government for its consideration, and therefore, there is violation of detenu's statutory rights as well as violation of constitutional rights guaranteed under Article 22(5) of the Constitution of India. It may also be noted that this issued has already been covered by the judgment of this Court(Coram: K.M. Mehta,J.)in the case of Jigneshkumar @ Pintoo Ashokbhai Dalwadi Vs. State of Gujarat and Others in SCA 19297 of 2005 decided on 08.12.2005.

10. In the result, this petition is allowed and order dated 27.09.2005 passed by the detaining authority is quashed and set aside. Mahendra Arjanbhai Patel-detenu is ordered to be set at liberty forthwith if he is not required by the authority in connection with any other case. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

(K.M.MEHTA,J.)

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